



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>05/14/03</b>	Bill No:	<b>ACA 7</b>
Tax:	<b>Local taxes</b>	Author:	<b>Dutra and Wolk</b>
Board Position:		Related Bills:	<b>ACA 9 (Levine) ACA 14 (Steinberg) ACA 15 (Wiggins) SCA 2 (Torlakson) SCA 11 (Alarcon)</b>

### BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize a local transportation agency and a regional transportation agency, subject to 55 percent voter approval, to impose a transactions and use tax at a rate of 0.50 percent to fund transportation projects.

#### Summary of Amendments

Since the previous analysis, this bill was amended to incorporate Board staff suggested technical amendments.

### ANALYSIS

#### Current Law

Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, subdivision (a), of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. Under Article XIII C, Section 1, subdivision (d), of the California Constitution, "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

The **Sales and Use Taxes Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

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The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales and use tax rate of 7.25 percent are as follows:

- 5 percent state tax is allocated to the state's General Fund which is dedicated for state general purposes (Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local governments to fund health and welfare programs (Sections 6051.2 and 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such a tax is approved by the voters. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1.50 percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1.75 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

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Also, under the Transactions and Use Tax Law, through specific legislation, some cities and special districts have been authorized to levy a transactions and use tax for either a general tax or a special purpose tax. Currently, there are 40 districts (cities, counties, special districts) that levy a transactions and use tax with tax rates ranging from 0.125 percent to 0.50 percent. The combined state, local, and transaction and use tax rates range from a low of 7.375 percent to a current maximum of 8.75 percent.

**Chapter 91 (Stats. 2000, AB 2928, Torlakson)** transfers the state's share of revenue from the sales tax on gasoline to a newly established Transportation Infrastructure Fund, for the five-year period from July 1, 2001 to June 30, 2006 to fund statewide transportation needs. A specified amount of the revenues in the Fund is allocated on a quarterly basis to fund specific transportation projects, and the remainder is allocation as follows: (a) 40% to the Department of Transportation (CalTrans) for capitol improvement projects in the State Transportation Improvement Program, (b) 40% to cities and counties for subventions for maintenance, rehabilitation, and reconstruction work on local streets and roads, and (c) 20% to the Public Transportation Account for transit and rail purposes.

### Proposed Law

This bill would add Article XIX C to the California Constitution to authorize a local transportation agency and a regional transportation agency, with the approval of 55 percent of the voters in the respective jurisdiction, to impose a transactions and use tax at a rate of 0.50 percent for the exclusive purpose of funding local and regional transportation planning, research, design, construction, operation, maintenance, and rehabilitation, and environmental mitigation related to the impacts of transportation projects. Specifically, this bill would provide that:

- If a transactions and use tax of limited duration, authorized to be imposed by the local or regional transportation agency for transportation purposes, **is not in effect** in the jurisdiction of a local or a regional transportation agency on the date that the tax is approved by the voters, the tax is imposed for **a period of 20 years**. The new tax would be effective on the first day of the first calendar quarter that commences more than 90 days after the approval of the tax by the voters.
- If a transactions and use tax, authorized to be imposed by the local or regional transportation agency for transportation purposes, **is in effect** in the jurisdiction of a local or regional transportation agency on the date that the tax is approved by the voters, the tax is imposed for **a period of not more than 30 years**. The new tax would be effective upon the first day that the transactions and use tax is repealed or otherwise becomes inoperative, or effective on the first day of the first calendar quarter that commences more than 90 days after the approval of the tax by the voters, whichever is specified in the tax ordinance that is adopted by the local or regional transportation agency and approved by the voters.
- The Board would be charged with the administration, collection, and allocation of the tax and would be reimbursed for its related costs. The revenues from the new tax would be deposited in the newly-created Local Transportation Infrastructure Account in the State Transportation Fund.

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- A "regional transportation agency" is defined as follows: (1) the Metropolitan Transportation Commission; (2) the Los Angeles County Metropolitan Transportation Authority; (3) the Orange County Transportation Authority; and (4) any transportation entity that is designated or authorized by statute as a regional transportation agency.
- A "local transportation agency" is defined as: (1) the local public entity designated within a county or a city and county, or authorized by statute, whose function is to administer, deliver, or implement a voter-approved transportation sales tax for transportation projects and programs within the boundaries of a county or a city and county; (2) if such an entity does not exist, then the designated congestion management agency within a county or city and county or the county transportation commission; and, (3) a local council of governments with the authority to administer or deliver a county transportation expenditure plan.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

### **Background**

Proposition 62, passed by the voters on November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that any tax for general purposes be approved by a majority of the voters and that any tax for specific purposes be approved by two-thirds of the voters.

In September 1995, the California Supreme Court upheld Proposition 62's voter approval requirements for local taxes. In the decision, *Santa Clara County Local Transportation Authority v. Guardino* (1995), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62. This decision raised important implications for other special (transportation) districts that passed transactions and use tax measures by a majority vote. Most of these measures had sunset provisions (the majority were authorized for a 20 year period), which requires voter reauthorization if the taxes are to remain in effect.

In 1991 and 1992, two court decisions declared that measures passed by the voters of San Diego and Monterey counties, which imposed a special purpose tax, failed to get the required two-thirds vote. In the decision, *Rider v. County of San Diego* (1991), the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Since the Agency was a special district and the transactions and use tax it imposed was special tax, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey* (1992), the First District Court of Appeal ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Revenue and Taxation Code Section 7285.5 (subsequently amended) had authorized a county to

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establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

Proposition 218, passed by the voters on November 5, 1996, added Articles XIIC and XIID to the California Constitution. Proposition 218 requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to allow counties, cities and counties, and regional transportation agencies to pass or extend transactions and use tax measures, with a 55 percent voter approval, for funding transportation projects.
2. **Key amendments.** The **May 14 amendments**: (1) clarified that a tax imposed under the provisions of this bill is a transactions and use tax pursuant to Part 1.6, Division 2 of the Revenue and Taxation Code; (2) provided that if a transactions and use tax for transportation purposes **is in effect**, when this new tax is approved by the voters, this new tax is imposed for a period of 30 years commencing with the first day that the old tax is repealed or otherwise becomes inoperative, or effective on the first day of the first calendar quarter that commences more than 90 days after the approval of the tax by the voters, whichever is specified in the tax ordinance that is adopted by the local or regional transportation agency and approved by the voters; and (3) where a tax **is in effect**, deleted the language "limited duration," so that existing transactions and use taxes imposed by local and regional transportation agencies for transportation purposes with no sunset dates can be included within the provisions of the bill. The **March 19 amendments** substituted "a local transportation agency" for "a county, a city and county" as the authority to impose a tax for funding transportation projects upon 55 percent of voter approval.
3. **This bill would change the vote requirement for local taxes.** This bill would amend the state Constitution to require a 55 percent vote to pass or extend transactions and use taxes. Nearly all of the existing transactions and use taxes were initially passed by a majority vote, but a subsequent court decision now requires two-thirds voter approval. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.

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- 4. Currently, local transportation authorities in 17 counties are imposing transactions and use taxes for transportation purposes.** Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 14 had measures that contained sunset provisions. The sunset dates of these taxes range from 2005 to 2011, with the exception of Alameda County. The Alameda County Transportation Authority transactions and use tax expired on March 31, 2002. Voters in Alameda County approved the Alameda County Transportation Improvement Authority transactions and use tax effective April 1, 2002, with a sunset date of March 31, 2022. Voters of Riverside County approved (by a two-thirds vote) an extension of the existing Riverside County Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.
- 5. The maximum combined transactions and use tax rate imposed throughout any county is 1.5 percent.** Existing Transactions and Use Tax Law provides a 1.5 percent rate limitation in any county, with the exception of San Francisco and San Mateo counties which have a 1.75 and 2 percent rate cap, respectively. If the Legislature does not want this tax to be subject to the cap, a provision should be added to this bill to increase, or to exclude this tax from, the rate cap provision contained in the Transactions and Use Tax Law.

The following language would exclude the tax imposed under the provisions of this bill from the rate limitation under Section 7251.1 of the Transactions and Use Tax Law:

"Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax rate authorized in subdivision (a) may not be considered for purposes of the combined rate limit established by that section."

- 6. Related Legislation.** Five bills introduced in 2003 would place on the ballot a constitutional amendment to change the voter approval requirement for local taxes.

**ACA 9 (Levine)** would constitutionally authorize a city, county, or special district to impose a qualified special tax, as defined, to fund capital infrastructure construction projects, with the approval of a majority of the voters. **ACA 14 (Steinberg)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose a special tax to fund local infrastructure projects, including general infrastructure, construction of emergency shelters and affordable housing, conservation of agricultural and open-space land, and neighborhood enhancement activities. **ACA 15 (Wiggins)** would authorize local governments, with the approval of a majority of the voters, to impose a special tax to fund local public safety departments, as defined.

**SCA 2 (Torlakson)** would constitutionally authorize counties, cities and counties, local transportation authorities, and regional transportation agencies, with the approval of a majority of the voters in the jurisdiction, to impose a transactions and use tax to be used exclusively for funding transportation projects and services and related smart growth planning. **SCA 11 (Alarcon)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose, extend, or increase a special tax or to incur indebtedness in the form of general obligation

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bonds to fund infrastructure projects, including construction of affordable housing for persons of very low, low, and moderate income, transportation enhancement activities, acquisition of land for open-space use, and other general infrastructure needs.

### **COST ESTIMATE**

This bill by itself would not result in additional costs to the Board. Local public entities are required to contract with the Board to perform functions related to the transactions and use tax ordinance, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board's ongoing services in actually administering the ordinance.

### **REVENUE ESTIMATE**

To the extent that this bill makes it easier for local governments to impose or extend local transactions and use taxes, this bill, if approved statewide, would increase local government transportation revenues. The revenue impact would be specific to each local government that approved a tax.

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